

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BENNIE OUTERBRIDGE, as Administratrix	:	
of the ESTATE OF EDDIE SAMUEL	:	
OUTTERBRIDGE and in her own right,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	NO. 00-1541
v.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA	:	
DEPARTMENT OF CORRECTIONS, et al.	:	
	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J.

June 7, 2000

Presently before the Court is the Medical Defendants' Motion to Dismiss. For the reasons stated below, the Motion is Granted.

I. BACKGROUND

Plaintiff is the alleged Administratrix of a decedent prisoner, Eddie Samuel Outerbridge ("Outerbridge"). She filed the Complaint on March 24, 2000 alleging federal and state claims against both the moving Medical Defendants¹ and the non-moving Commonwealth Defendants. This Court dismissed all claims against the Commonwealth Defendants by an

1. The Medical Defendants will be the term used to refer to the following Defendants who provided medical services at SCI-Mahanoy: Lazlo Kiraly, M.D. ("Kiraly"), John Hipps, M.D. ("Hipps"); Stanley Hoffman, M.D. ("Hoffman"); John Rush, P.A.C. ("Rush"); Ronald Scott, P.A.C. ("Scott"). All five of these individuals were hired by or contracted with Defendant Correctional Physician Services ("CPS"). During the time period relevant to this suit, CPS entered into a contract to provide medical services to inmates at SCI-Mahanoy.

Order dated May 26, 2000. The federal claims against the Medical Defendants include a violation of the Eighth Amendment and a conspiracy count. The state law claims involve medical negligence, survival and wrongful death. The Complaint arises from the treatment and medical care received by decedent Outterbridge that are alleged to have resulted in his death.

According to the Complaint, Outterbridge began his incarceration at SCI-Mahanoy in October, 1992. After receiving a positive tuberculin test in October, 1997, Outterbridge began a prophylactic treatment termed INH. Although Outterbridge complained repeatedly to treating physicians that the INH was making him ill, he was forced to continue the medication. The Plaintiff alleges that Outterbridge's medical condition was continually misdiagnosed by the individual Medical Defendants. He was finally removed from SCI Mahanoy on April 15, 1998 and died ten days later at Good Samaritan Hospital in Pottsville, Pennsylvania.

II. LEGAL STANDARD

Defendants argue that the case should be dismissed for lack of jurisdiction under Fed. R. Civ. P. 12(b)(1). A motion to dismiss on jurisdictional allegations should be judged by the same standards as a Rule 12(b)(6) motion to dismiss. See Mortenson v. First Federal Sav. and Loan Ass'n, 549 F.2d 884, 890 (3d Cir. 1977). When deciding to dismiss a claim pursuant to Rule 12(b)(6) a court must consider the legal sufficiency of the complaint and dismissal is appropriate only if it is clear that "beyond a doubt ... the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." McCann v. Catholic Health Initiative, 1998 WL 575259 at *1 (E.D. Pa. Sep. 8, 1998) (quoting Conley v. Gibson, 355 U.S. 41, 45-46

(1957)). The court assumes the truth of plaintiff's allegations, and draws all favorable inferences therefrom. See, Rocks v. City of Philadelphia, 868 F.2d. 644, 645 (3d. Cir. 1989). However, conclusory allegations that fail to give a defendant notice of the material elements of a claim are insufficient. See Sterling v. SEPTA, 897 F.Supp. 893, 895 (E.D. Pa.1995). The pleader must provide sufficient information to outline the elements of the claim, or to permit inferences to be drawn that these elements exist. Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d. Cir. 1993). A court must determine whether, under any reasonable reading of the pleadings, the law allows the plaintiff a remedy. See, Nami v. Fauver, 82 F.3d 63, 65 (3d. Cir. 1996).

III. DISCUSSION

A. Count 1: § 1983 claim for violation of the Eighth Amendment

The Plaintiff has included all of the Medical Defendants in Count 1. The Supreme Court has declared that, in accordance with the " 'broad and idealistic, concepts of dignity, civilized standards, humanity, and decency' " embodied in the Eighth Amendment, the government is obliged "to provide medical care for those whom it is punishing by incarceration." Estelle v. Gamble, 429 U.S. 97, 102(1976). Deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain,' proscribed by the Eighth Amendment." Id. at 104. To be in violation of the Eighth Amendment, there must be both deliberate indifference on the part of the officials and a serious medical condition. Monmouth County Correctional Inst. Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987).

The Supreme Court adopted a subjective test for what would constitute an Eighth Amendment violation in Farmer v. Brennan, 511 U.S. 825, 837 (1994):

“A prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference”. Id.

Therefore, the Court continued, “... an official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment”. Id. at 838. Therefore, to state a § 1983 claim for a denial of medical treatment, the Plaintiff must specifically allege that each defendant was aware of the serious risk Outterbridge faced and that the person disregarded such risk.

After reviewing the Complaint, the Court finds that the Plaintiff has never alleged that any of the Medical Defendants drew inferences that Outterbridge faced a risk of serious harm. The Complaint repeats that each Defendant continued to treat Outterbridge with INH even though he complained of its effects. Plaintiff also alleges that the Medical Defendants “consciously disregarded” abnormal findings resulting from the ingestion of INH. While these facts suggest medical malpractice, they do not sufficiently allege that the Defendants knew of and disregarded the serious risk faced by decedent Outterbridge. Therefore, the Plaintiff’s §1983 claims against the Medical Defendants will be dismissed.

Plaintiff has likewise failed to state a cause of action against CPS, as the employer of the individual Medical Defendants. The Third Circuit has repeatedly concluded that no respondeat superior liability exists pursuant to § 1983 under any circumstance. See Robinson v. City of Pittsburgh, 120 F.3d 1285 (3d Cir. 1997). Nevertheless, a private corporation may be held liable for a constitutional violation if it knew of and acquiesced in the deprivation of the

plaintiff's rights. See Miller v. Hoffman, 1998 U.S. Dist. LEXIS 9934. A Plaintiff must state that the corporation, with deliberate indifference, established and maintained a policy which directly caused plaintiff's constitutional harm. See Stoneking v. Bradford Area Sch. Dist., 882 F.2d 720, 725 (3d Cir. 1989). The Plaintiff has not alleged any policies of CPS that led to constitutional harm suffered by Outterbridge.

B. Count 2: Conspiracy to Violate the Eighth Amendment:

The elements of a conspiracy are a combination of two or more persons to do a criminal act, or to do a lawful act by unlawful means or for an unlawful purpose. Ammlung v. City of Chester, 494 F.2d 811, 814 (3d Cir.1974). The plaintiff must make specific factual allegations of combination, agreement, or understanding among all or between any of the defendants to plot, plan, or conspire to carry out the alleged chain of events. See Panayotides v. Rabenold, 35 F.Supp.2d 411, 419 (E.D. Pa. 1999). Only allegations of conspiracy which are particularized, such as those addressing the period of the conspiracy, the object of the conspiracy and certain other actions of the alleged conspirators will be deemed sufficient. See Rose v. Bartle, 871 F.2d. 331,366 (3d Cir. 1989). Drawing inferences in favor of the Plaintiff, it can be assumed that the object of the conspiracy was to violate Outterbridge's constitutional rights by remaining deliberately indifferent to his medical needs. It can also be inferred that the period of the conspiracy lasted from the time IHN treatment was started until April 15, 1998, the day Outterbridge was transferred out of SCI-Mahanoy. However, there are no specific allegations that the Medical Defendant agreed to violate Outterbridge's right to medical treatment. In order to survive a motion to dismiss, the Plaintiff can not baldly claim that Defendants actions and omissions constituted a conspiracy without alleging what constituted concerted action. As stated

above, the Court finds that the Plaintiff did not sufficiently allege a substantive Eighth Amendment violation. Plaintiff has also failed to state a claim of conspiracy to violate decedent Outterbridge's constitutional rights. Therefore, Count 2 will be dismissed against all of the Medical Defendants.

IV. CONCLUSION

The Plaintiff has failed to allege any claims against the Medical Defendants that would give this Court jurisdiction under 28 U.S.C. § 1331. Since the Court no longer has original jurisdiction over any claim in this case, the Court declines to exercise supplemental jurisdiction over the remaining state law claims (see 28 U.S.C. § 1367(c)), unless the plaintiff can successfully replead its alleged § 1983 claim.

An order follows.

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DEPARTMENT OF CORRECTIONS, et al.	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 7th day of June, 2000, upon consideration of the Medical Defendants' Motion to Dismiss (Docket No. 5), and the Plaintiff's Response thereto (Docket No. 10); it is hereby **ORDERED** that the Motion is **GRANTED** as to Counts 1 and 2 with respect to the Medical Defendants. It is **FURTHER ORDERED** that plaintiff is granted leave to file an amended complaint if he can do so in accordance with this opinion.

If no such amended complaint is filed on or before **June 30, 2000**, the court, on motion of defendant, will dismiss Counts 1 and 2 and decline to exercise supplemental jurisdiction over the state claims.

BY THE COURT:

RONALD L. BUCKWALTER, J.